IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1490 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA THROUGH GENERAL MANAGER

Versus

VIPULKUMAR C MODI

Appearance:

MR JC SHETH for Petitioners

MR CP JADHAV for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/07/2000

ORAL JUDGEMENT

#. The father of Vipulkumar C.Modi was a employee of Indian Railways. While in service, the father of Vipulkumar C. Modi died in the year 1974. The Indian Railways have a Scheme for appointment under died in

harness Scheme. At the time of death of the father of Vipulkumar Modi, he was a minor. According the Scheme, employment under die in harness Scheme to the sons and daughters of the deceased who were minors at the time of death can be made if the minor after attaining the age of 18 years apply for a job within six months. The Scheme further imposes a condition that the period between the date of death and attaining the age of majority of the son and daughter of the deceased employee must be restricted to five years. However, this five years period has been extended by the Railway Administration to ten years and subsequently to twenty years. The case of Vipulkumar Modi was taken up by Pachmim Railway Karmachari Parishad (Parishad for short) and the Parishad moved the authority for making a reference to the Industrial Tribunal as said Vipulkumar Modi was not provided with a job under die in harness Scheme on the ground that he applied for the post after about 11 months from the date of attaining his majority. Vipulkumar Modi attained majority on 16.5.1987 and he is required to apply for the post within six months i.e. 15.11.87 but he has applied for a post on 6.4.88 and on this ground the application of Vipulkumar Modi has been rejected by the Railway Administration. Having felt aggrieved by the decision of the Railway Administration, the Parishad took up the matter and ultimately a dispute was referred to the Industrial Tribunal (Central), Ahmedabad which has registered the case as Ref(ITC) 15 of 1992. The Industrial Tribunal (Central), Ahmedabad after hearing the parties and considering the oral and documentary evidence passed its judgment and award dated 7.11.1998 directing the Western Railway to appoint Vipulkumar Modi to any suitable post according to his qualifications. The Western Railway Administration having felt aggrieved by the judgment and award of the Industrial Tribnunal(Centarl), Ahmedabad on 7.11.1998 in Ref.(ITC) No. 15/92 filed the present writ petition and prayed to quash the judgment and award of the Industrial Tribunal (Central).

#. I have heard Mr. J.C.Sheth learned counsel on behalf of the petitioner and Mr. U.P.Jadav learned counsel on behalf of the respondent- Parishad.

#. Learned counsel for the petitioner submitted that according to the Scheme the sons and daughters of the deceased employee are required to apply within six months after attaining the age of majority and in the present case, Vipulkumar Modi applied for the post after a period of four months and twenty days-i.e. beyond the period of six months and therefore, the application of Vipulkumar

Modi was time barred and consequently the application for appointment of Vipulkumar Modi under died in harness Scheme has been rejected by the Authority. The learned counsel on behalf of the petitioner submitted that the Industrial Tribunal (Central) should have considered the Scheme of the Railway Administration and since the case of Vipulkumar Modi is not covered under the Scheme and it is time barred, the Tribunal should have rejected the Reference. Mr. Jadav learned counsel on behalf of the respondent Parishad submitted that though time limit of six months has been prescribed under the Scheme, this period should not be strictly construed. But it is at the discretion of the Railway Administration to relax the conditions regarding the time limit within which an application has to be made. Learned counsel has drawn my attention to the Circular of Railway Board bearing No. E(NG)II/96/RC-1/48 dated 4.12.96 - (RBE) No. 121/06 and submitted that compassionate appointment can be considered by the General Managers of Railways even if an application is made after 20 years from the date of death of the deceased employee and also who has applied within two years on attaining the age of majority. Learned counsel submitted that the General Manager of Western Railway has committed an error in not considering the Application of Vipulkumar Modi. It is submitted by the learned counsel that the Railway Board has given power to General Managers of Railways to consider an application which has been made after 20 years from the date of death of the deceased employee and also to consider the case who has applied for a post even after two years from the date of attaining majority. The learned counsel on behalf of the respondent accordingly submitted that since the General Manager, Western Railway has failed to consider this aspect of the circular of the Railway Board, the Industrial Tribunal (Central) has correctly directed the Western Railway to appoint Vipulkumar Modi in a post according to his qualifications under the die in harness Scheme. There is some force in the submission of the learned counsel on behalf of the respondent. From the Railway Establishment Rules and Labour Laws it appears that the Railway Board has issued the Circular giving powers to the General Managers of the Railways to consider the applications which have been made by the sons and daughters of the deceased employees within 20 years from the date of death of the employees and also to consider the cases of the applications which have been filed by the sons and daughters of such deceased employees within two years from the date of attaining majority.

#. I am of the view that the General Manager, Western

Railway should have considered the case of Vipulkumar Modi having regard to the question of aforesaid circular of Railway Board. However,, I am of the view that the Industrial Tribunal (Central) has committed an error in directing the Western Railway to appoint Vikpulkumar Modi to a suitable post according to his qualifications. Instead, the Industrial Tribunal should have directed the General Manager, Western Railway to consider the case of Vipulkumar Modi in the light of the circular of Railway Board as stated above and appoint him to a suitable post according to his qualifications under die in harness Scheme. Therefore, I am of the view that the Industrial Tribunal has exercised its jurisdiction not vested in it under the law. Accordingly the judgment and award of the Industrial Tribunal (Central), Ahmedabad passed in Ref.(TC) No. 15 of 1992 is quashed. However, the General Manager, Western Railway, Churchgate, Bombay is directed to consider the application of Vipulkumar Modi for his appointment to a post according to his qualifications within a period 3 months from the date of receipt of a fresh application from Vipulkumar Modi. Respondent Vipulkumar Modi is directed to file an application to the General Manager, Western Railway, Churchgate, Bombay through the Pachim Railway Karmachari Parishad-the respondent within 15 days from today. The General Manager, Western Railway, Churchgate, Bombay shall consider said application of Vipulkumar Modi within a period of three months from the date of receipt of the application for appointment of Vipulkumar Modi in a suitable post according to his qualifications under died in harness Scheme. It is also clarified that if in the meantime Vipulkumar Modi exceeds the maximum age for entry in Railway Services, then this aspect shall also be considered by the General Manager and if necessary age relaxation may also be made.

With the aforesaid observations and directions the writ petition is allowed. Rule is made absolute. No order as to costs.

(P.K.Sarkar.J)

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